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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2379 of 1993

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and
MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

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2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

[illegible]

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

LOK ADHIKAR SANGH

Versus

STATE OF GUJARAT ANOTHER

Appearance:

MR GIRISH PATEL, Sr.Advocate Mr Anand Yagnik for Petitioner
MR S N Shelat, Addl.Advocate General with Ms.
Harsha Devani, AGP for respondent No.1
Mr S V RAJU for Respondent No. 2

CORAM : THE ACTING C.J.R.A.MEHTA, and
MR.JUSTICE N.N.MATHUR

Date of decision: 17.10.1997

JUDGMENT (Per. Mathur, J.)

This is a Public Interest Litigation filed at the instance of Lok Adhikar Sangh, a human rights organisation claims to be committed to the defence and protection of civil liberties and democratic rights of the people, and particularly of the poor and downtrodden in the State of Gujarat. The petition has been filed on behalf of Smt. Ushaben Satisbhai Punjani, whose husband Satisbhai Punjani alleged to have been brutally beaten by respondent No.2- Jitendra Rajgor, District Superintendent of Police, Jamnagar, as a result of which the said Satishbhai Punjani died.

2. The say of the petitioner is that on 8.1.1992, the police picked up the deceased Satishbhai along with two others, namely; Bakul and Narsinh and took them to the police station for interrogation. At the police station, at about 9 p.m., respondent No.2 came and he called all the three in his chamber. It is alleged that during interrogation, said Shir Rajgor gave them beating with big stick. First Bakul was severely beaten and then Narsinh was given 30 to 40 blows. Lastly, Satisbhai Punjani was beaten severely causing injuries on various parts of the body. He also gave some blows on his chest and stomach. Thereafter, the DSP left the police station. After some time Police Inspector Kanaksinh Sodha arrived there. He allowed all the three to go home, but asked them to report back on the next day at 4.00 p.m. Satishbhai Punjani (for short, 'Satish') went home, but his condition became critical and thus one Dr. Suresh Mehta was called to examine him. Dr. Suresh Mehta advised the family members of Satishbhai to take him to hospital immediately. It is said that on way to the hospital, Satish died. Autopsy was conducted at Irwin hospital on 9.1.1992. According to the Post Mortem report, Satish died due to Cardiac arrest on account of coronary insufficiency as a result of coronary blockage.

3. The relatives of deceased Satish and the people of Jamnagar suspected that the cause of death of Satish was severe beating by the DSP, Jitendra Rajgor. This led to the citizens' protest in Jamnagar and several representations to various authorities in the State. As a result thereof, Jitendra Rajgor was immediately transferred. On 19.1.1992, the Chief Minister gave assurance for a full and independent enquiry. Accordingly, a Medical Board consisting of Dr. Thakorebhai Patel of Civil Hospital, Dr. Sunil Dalal of V.S. Hospital, Dr. V H Yagnik of Irwin Group of

hospitals was constituted to enquire into the circumstances leading to the death of Satish. The Government also issued order dated 22.9.1992 directing payment of Rs.25,000/- to the widow of deceased Satish from the relief fund of the Chief Minister.

4. Respondent No.2-Jitendra Rajgor has filed affidavit denying the allegations. He has denied his visit to the police station and calling the deceased and two other persons. He has also denied the allegations of beating to the deceased Satish. He has also stated that in the Gujarat Vidhan Sabha, the Hon'ble the Chief Minister who was also holding charge of the Home Department made a statement that the deceased Satisbhai did not die on account of beating by him. (DSP, Jitendra Rajgor). This statement was made by the Hon'ble Chief Minister, after receiving the report from the enquiry Committee constituted by him. He has also pointed out the inherent inconsistencies in the case framed against him.

5. A reply has also been filed on behalf of the State Government through K M Jadav, Dy. Secretary, Home Department. It is stated that the deceased Satish was one of the accused in a case registered being CR.11/92 at Police Station, Jamnagar, for offences under sections 363, 366 and 114 of Indian Penal Code. On 8.1.1992, at about 16.00 hrs. he was called to the police station for interrogation along with the other two accused. However, in the meanwhile, the Police Inspector In-charge of the police station, on receipt of the information about a murder case, left the police station at 17.00 hrs. The accused persons were asked to sit there and at about 20.45 hrs., the DSP arrived at the police station on usual round. On arrival of the DSP, the Police Inspector was called back to the police station. After interrogation, deceased Satish and two other accused persons were allowed to go home at about 21.45 hrs. But they were asked to remain present next day at 16.00 hrs. Thereafter, one Kantilal R Rajgor came to the police station and informed the Police Inspector about the death of Satish. The Police Inspector made entry in the police diary and registered accidental death case being No.I/92 under the provisions of section 174 of the Criminal Procedure Code and also informed the DSP about the incident. It is also stated that the incident was investigated by the Special I.G. (Crime) Branch, under the directions of the Hon'ble Chief Minister. It is also stated that ex-gratia assistance to the widow of deceased Satish was given from non-governmental source for a sum of Rs.25,000/-. It is stated that the panel of doctors

unanimously expressed that Satish died due to heart attack. It was also found that even Dr. S B Mehta, the family doctor of the deceased who had given primary treatment also expressed opinion that Satish died due to heart attack. However, the Government on 27.9.1994, decided to initiate departmental enquiry against respondent No.2. Thus, the case of the State Government appears to be that Satish died due to cardiac arrest and it has no relation with the alleged beating of the deceased at the hands of respondent No.2.

6. It is contended by Mr Girish Patel, learned Advocate for the petitioner that the 'death' of Satish as a result of severe beating by the DSP in the police custody is by way of gross abuse of power by the police and it amounts of flagrant violation of life of Satish under Article 21 of the Constitution. He has invited our attention to the Post Mortem report and also the report of the Medical Board constituted under the directions of the State Government. It is submitted that from the reading of the Post Mortem report along with the report of the panel of experts, prima facie leads to the conclusion that that Satish died as a result of severe beating by the DSP. He further submitted that the grievance of the petitioner-Lok Adhikar Sangh, an organisation committed for defence and protection of civil liberties and democratic rights is not only confined to an appropriate direction for the prosecution and departmental enquiry against respondent-Jitendra Rajgor, the then DSP and further appropriate compensation to Smt. Ushaben, widow of the deceased, but also to check arrest and to take note of the increasing cases of police torture and to give appropriate direction to check police atrocities.

7. Mr S N Shelat, learned Addl.Advocate General submits that the State Government promptly acted and directed investigation by the Senior Police Officer of the Rank of Inspector General of Police. A committee of the Doctors was also constituted to enquire into the matter. The committee has submitted the report and has opined that it cannot be said that beating has contributed towards the heart attack on account of which deceased Satish died. The Inspector General of Police, after a thorough investigation, has also arrived at the conclusion that there is evidence to show that the respondent No.2 gave beating to the deceased Satish, however, in view of the opinion of the panel of Doctors, the cause of death cannot be attributed to the said beating and as such offence against respondent No.2

cannot travel beyond section 323 of I.P.C. which is a non-cognizable offence and thus the police cannot investigate and submit a police report to prosecute Mr Rajgor. With respect to the departmental enquiry against respondent No.2, the concerned file has been placed before us and it is submitted that appropriate action is being taken. On the question of compensation, it is submitted that the State has already made ex-gratia payment of Rs.25,000/- to the widow of the deceased. He further submits that on the facts of the case, the State cannot be said to be vicariously liable for payment of compensation as the death has not occurred in the police custody, and therefore, it is not at all a case of custodial death.

8. Mr S V Raju, learned Advocate appearing for the respondent No.2-Jitendra Rajgor submits that the entire case against his client is absolutely false and fabricated. He further submits that no case has been registered with respect to the incident of the death of Satish, and as such there is no investigation at all. Initially only an accident case was registered and subsequently an enquiry was made by the Inspector General of Police, who found it to be a case of non-cognizable offence, and as such no direction for prosecution of the respondent No.2 can be given. He further submits that even if it is assumed that there is an investigation then also it is established law that cognizance can be taken of offence and not of offender, and therefore, it is not open for this Court in exercise of its powers under Article 226 of the constitution of India to undertake an exercise to identify the accused and direct prosecution. Further in alternate, it is submitted that even if the facts as stated are accepted as true on its face value, the offence against respondent No.2 does not travel beyond section 323 of I.P.C. which is a non-cognizable offence, in that event, it is open for the complainant to file a complaint. He also submitted that the allegations against the deceased was that he was involved in kidnapping of a minor girl of a widow. If during interrogation, a light beating was given, then the Police official cannot be said to have committed any offence. He further submitted that on account of this case, he has already suffered a lot, inasmuch as he has been deprived of promotion including to I.P.S. cadre. The learned Advocate, relying on a decision of the Apex Court in the case of Peoples Union for Civil Liberties vs. Union of India & Anr., reported in 1997 (1) SCC 483, submits that in an appropriate case, the Court may direct the State Government to pay compensation to the family of the deceased, but it is not necessary to pass an order for

prosecution of the police officials. Any direction to pay the interim compensation by the Police Officer Mr Rajgor will amount to pre-judging the case, even before investigation and trial.

9. We have given our thoughtful and anxious consideration to the contentions raised by the learned Counsel for the respective parties.

10. The High Court, exercising the powers under Article 226 of the Constitution of India in a case where the allegations are with respect to a criminal case, is concerned with the performance of legal duty or the obligation of the State and its agencies. It cannot be disputed that investigation of an offence is the field exclusively belonging to police under the supervision of the Government. But if the complaint is that the investigation is not fair for any reason or the police officer has transgressed or improperly exercised or failed to exercise the power of investigation, causing serious prejudice to the rights of a citizen, it will be the duty of the High Court to issue appropriate direction which may include giving direction to register case, if the facts prima-facie, discloses a cognizable offence and further if the facts of the case so demands, the Court may keep the petition pending and regulate the investigation, without interfering with the investigation. It is the duty of the Investigating Officer to identify the accused and collect all necessary evidence to prove the offence. Once that is done, the Investigating Officer is required to submit Police Report to the Court of competent jurisdiction. After the charge-sheet is filed, the Court is required to consider if the cognizance is to be taken on police report or not. It must be clearly understood that cognizance is taken of offence and not of the offender. When the accused is put to trial, the Court concerned itself with the question as to whether the accused arraigned is guilty of the crime with which he is charged. Thus, there being clear-cut and well demarcated sphere, at this stage, it is not for this Court to make any enquiry to identify the accused. Therefore, the contention advanced on behalf of the petitioner that the respondent No.2 i.e. Mr Jitendra Rajgor has committed the crime of murder and the contention of Mr S V Raju that the said respondent i.e. Jitendra Rajgor is innocent, is not required to be gone into in depth. We are required only to consider as to whether prima facie the allegations disclose a case constituting a cognizable offence. If so, the next question arises is as to whether the case has been fairly

investigated? In fact an accused does not come into picture at this stage, and such a suspect is not required to be heard, even if the petitioner has made such suspect party-respondent. As a result of any directions of the High Court in such matters, if a person entertains apprehension that he may be arrested or charge-sheeted, he has remedy under the provisions of Code of Criminal Procedure. He may apply under section 438, for anticipatory bail and satisfy the Court that there is no case against him, and if the charge-sheet has been filed against him, he may satisfy the court that there is no case against him and as such, no charge be framed. Such applications will be decided by the courts concerned without being influenced of the order of the High Court, passed in exercise of powers under Article 226 of the Constitution on such petition, unless there is any direction otherwise. But he cannot be heard on the point as to whether any direction should be given for registering the case or not. A FIR can always be registered, even without asking the suspect or accused. In view of this, respondent No.2 who can only said to be a suspect in the case, is not a necessary party. At the most he may be a proper party, but he cannot claim audience as of right. Thus, the contentions of Mr Raju on merit of the case does not require any consideration at this stage.

11. However, it is argued by Mr Raju, learned Counsel that no direction can be given for prosecution of the respondent No.2, as till now no FIR has been registered, and as such there has been no investigation in accordance with the provisions of Code of Criminal Procedure. He further submits that the Inspector General of Police has only conducted an administrative enquiry, and arrived at the conclusion that the fact constitutes only non-cognizable offence. In our view, the contention deserves to be rejected.

In order to appreciate the contention, it would be appropriate to refer some of the provisions of Code of Criminal Procedure. "Inquiry" defined under 2(g) of the Cr.P.C., which means every enquiry other than trial, conducted under the Code by Magistrate or the Court must be distinguished from "Investigation" under Chapter XII. An enquiry is normally conducted by a Magistrate or Court whereas "Investigation" is conducted by a Police Officer or any person other than a Magistrate or Court. The definition of the word "investigation" under section 2(h) is not exhaustive, it includes all proceedings under the Code for the collection of evidence conducted by Police Officer or by any person other than a Magistrate, who is

authorised by Magistrate in this behalf. Investigation usually commence with the information relating to commission of offence given to the Officer in-charge of the investigation under section 154 of the Code. Section 155 provides that if the information is of commission of non-cognizable offence, the Police Officer will enter the substance of the information in the prescribed register and refer the informant to the Magistrate. Section 156 empowers the Police to investigate only cognizable offence, except on direction by the Magistrate. Section 157(1) requires an officer in-charge of a Police station who "from information received or otherwise." has reason to suspect the commission of an offence that is a cognizable offence, which he is empowered to investigate under section 156 to forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a police report and either to proceed in person or depute anyone of his subordinate officers not being below such rank as the State Government may, by general or special order prescribe in this behalf, to proceed to the spot to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. This provision is qualified by a proviso which is in two parts. As per clause (a) the officer in-charge of the police station need not proceed in person or depute a subordinate officer to conduct an investigation on the spot of the information as to the commission of any such offence is given against any person by name and the offence is not of serious nature. As per clause (b) of it appears to the officer In-charge of the police station that there is no sufficient ground for entering into investigation, he shall not investigate and as required by clause (2), he shall send a report to Magistrate with reasons for not complying with the requirement of sub-section (i) and further in addition, he will forthwith, notify to the informant that he will not investigate or cause the case to be investigated. Thus, the Police Officer has to satisfy himself and form opinion only on the basis of the allegations made in the First Information Report as to whether those allegations constitute a cognizable offence warranting an investigation. The Police Officer at this stage, cannot embark upon an enquiry as to whether the information laid, is reliable and genuine. In charge of the police station is under statutory obligations to register a case and then proceed with investigation if he has reason to suspect the Commission of cognizable offence. If he forms the opinion that there is no sufficient ground to enter into investigation, he must follow the procedures provided under section 157(2) of the Cr.P.C. i.e. sending the report to Magistrate with

reasons and to inform the informant. This will give an opportunity to the informant to file a complaint and ask for direction to Police for investigation under section 156(3) of non-cognizable offence. If the procedure under clause (2) is not followed, it must be presumed that the Police Officer has proceeded with the investigation considering the case to be of cognizable offence.

12. It is significant to notice the use of expression "information" under section 154(1) and 157(1) of the Cr.P.C. The information may be oral or written, the only requirement is that on receipt it must be reduced to writing. There is no requirement of registration of such First Information Report. The another requirement is that on receipt of an information, In-charge of the police station should form an opinion that he suspects commission of cognizable offence. The expression "reason to suspect" employed under section 157 (1) has to be governed and dictated by the allegations made in the First Information Report, and at that stage the question of adequate proof and the involvement of any accused named in the crime does not arise. Thus, the process of collection of evidence under the Code, in pursuance of information with respect to commission of crime, regarding which no report is sent to the Magistrate and the informant is informed as acquired by section 157 (2) fall within the definition of "investigation" under section 2(h) of the Code, irrespective of the fact that formally such FIR has been registered or not.

13. In the instant case, one Kantilal Rajgor informed the S.H.O. police station, Jamnagar, that Satish who was beaten at the police station has died. Post-Mortem report disclosed that ante-mortem injuries on the body of deceased Satish. Admittedly S.H.O. has not proceeded under section 157 (2), and therefore, it must be presumed that the S.H.O. formed the opinion on the basis of information that he suspected commission of cognizable offence, and he proceeded with investigation. The investigation was subsequently transferred to Inspector General of Police (Crime). He found the allegation of custodial torture to be true, but in his opinion, the cause of death of Satish was not the beating at police station and thus in his opinion, the allegations only constitutes offence under section 323 I.P.C. which is non-cognizable.

14. Now, the question which arises for consideration is as to whether prima facie, the death of Satish has any relation with the injuries inflicted by the police

officer while he was in police custody. The post-mortem report indicates that the deceased sustained following external injuries:

- "(1) Railroad pattern bruise on outer side of right thigh, vertical, situated 15 cms. above knee joint. size 22 cm x 3 cm. with 0.8 cm. healthy skin in between.
- (2) Railroad type bruise oblique, on outer side of right thigh with anterior end being lower, crossing lower third of inj. (i) size 10 cm x 3 cm with 0.8 cm. healthy skin in between.
- (3) Railroad type bruise on posterior aspect of right thigh, 12 cms. above knee joint. Transverse size 8 cms. x 3 cms. with 0.8 cm. healthy skin in between.
- (4) Railroad type bruise on posterior aspect of right thigh, transverse, 2 cms. above inj.(3) size 8 cms x 3 cms with 0.8 cms. healthy skin in between.
- (5) Railroad type bruise, on outer side of left thigh 24 cms. above the knee, oblique (upper end posterior side) size - 12 cms x 3 cms. with 0.8 cm. healthy skin in between.
- (6) Railroad type bruise on lower and outer quadram of left hip nearly transverse size 9 cm x 3 cm. with 0.8 cm. healthy skin in between.
- (7) Railroad type bruise 2 cms. below inj. (6) in the same plane. size 6 cms x 3 cms. with 0.8 cm. healthy skin in between. All injuries are ante-mortem in nature and are reddish in colour."

Doctors opined the probable cause of death as follows:

"Cardiac arrest on account of coronary insufficiency as a result of coronary blockage".

The history sheet indicates that there were injuries on the lower half of the body by hard, blunt and yielding object like a wooden plank. There was also evidence of bruises (injuries) on both the thighs caused by hard, blunt and yielding object. The panel of Doctors noticed that history of ischaemic heart disease was not available

in the patient. The panel observed as under:

"It is possible for emotional upsets, excitement, fear, mental tension, and exhaustion to precipitate acute Myo Cardial Infection in persons with normal coronary arteries and more so in those with diseased coronary arteries. Physical beating can lead to such stress."

The panel however, opined that it is not possible that absolute certainty whether beating has contributed towards percipitation of mio cardial infection. The panel has given the following reasons for the said opinion:

- (i) It is known that patients although suffering from heart disease and being subjecte to physical an emotional trauma during day to day activities, o not necessarily suffer from heart attack every time that they are subjecte to such physical an emotional trauma;
- (2) this means that there is no 100% cause and effect relationship;
- (3) on the other hand it is known that emotional trauma can percipitate heart attack in some cases;
- (4) Moreover, heart attack can occur de novo in absence of physical and emotional trauma."

15. In our opinion, it is a matter of trial to arrive at a final conclusion as to whether physical beating in the present case has led to a stress causing his death. At this stage, it is sufficient that there is possibility of beating leading to stress contributing towards percipitation of mio cardial infection. Thus, it prima facie appears to be a case of homicidal death.

16. Having traced the death of Satishbhai to the act of police officers, two elements emerge - one is monetary or pecuniary compensation and second, awarding an appropriate punishment to the offender. The Apex Court, in the case of D K BASU v. STATE OF WEST BENGAL, reported in JT 1997 (1) SC 1, observed that

"The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the

offence must be left to the criminal courts in which the offender is prosecuted, which, the State, in law, is duty bound to do so."

Dealing with the vicarious liability of the State, the court held that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes is the only suitable remedy for redressal of the established infringement of fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The Court further observed that the claim of the citizen is based on the principles of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State which shall have the right to be indemnified by the wrong doer.

14. In the case of CHARINJIT KAUR v. UNION OF INDIA, reported in AIR 1994 SC 1491 the husband of the petitioner who was a Major in the Army was posted at Kargil. On a complaint of chest pain, on diagnosis, it was found to be a case of Ischaemic heart disease. His wife at Meerut was informed. She accordingly along with her children rushed to Leh. She found her husband lying in a make-shift hospital which was devoid of life saving treatment. The condition of her husband was precarious. She requested the Army officials to air-lift her husband to Ambala Military hospital for appropriate treatment. After great persuasion, the army authorities agreed to shift her husband from Leh to Ambala. However, she was not allowed to accompany him in the air-craft. She was asked to move with her children independently from there and reach Ambala to receive her husband. While she was on way at Udampur checkpost, she was informed that her husband was not well and she should return. The petitioner rushed back to Leh, where she received a rude shock when she was shown the burnt body of her husband. The authorities did not disclose her the circumstances under which her husband received the burns. Later on she was only given report of post-mortem examination conducted by the Army Medical authorities at Leh which attributed death to "extensive burns". The only say of the army authority was that her husband on his own gone to attend to some private business in the cook house and later his charred body was found with 98 per cent burns due to kerosene oil. The Court, appreciating the facts arrived at the conclusion that the deceased officer died while in service in mysterious circumstance and his death was attributable to by the aggravated act of the military authorities. The Court also found that the responsibility of his death was prima facie traceable to

act of criminal omissions and commissions on the part of the concerned authorities. In view of this finding, the court held that the widow of the deceased was entitled to suitable compensation which was assessed as Rs.6 lakhs and also family pension.

16. In Smt. NILABHATI BEHERA v. STATE OF ORISSA, reported in 1993 (2) SCC 746 the petitioner complained that his young son aged 22 years was taken from home by the police in connection with the investigation of an offence of theft. However, on the next day, his body was found on the railway track. There were multiple injuries on the body. The police pleaded that the deceased managed to escape from the police custody at 3.00 a.m. on the night between 1st and 2nd day of December, 1987 and he could not be apprehended. Thereafter, and his dead body was found on the railway track with multiple injuries which indicated that he was ran over by passing train after he had escaped from the police custody. The Supreme Court, on appreciation of the evidence during the inquiry, arrived at the conclusion that it was a case of custodial death. It was also held that the court under Article 32 and 226 of the Constitution of India has power to award compensation in such proceedings instead of directing the claimants to resort to the process of recovery of damages by action in turn. On the facts of the case, a sum of Rs. 1,50,000/- was awarded.

17. In ARVINDER SINGHH BAGGA v. STATE OF U.P. & Ors., reported in (1994) 6 SCC 565, a married woman alleged to have been raped was subjected to physical, mental and psychological torture with a view to give a false statement implicating her husband and family members in a case of abduction and forcible marriage thereafter. Her husband and family members were also tortured and humiliated.

The Apex Court directed -

- (i) to launch prosecution against the erring police officers and
- (2) to pay a compensation of Rs. 10,000/- to the victim woman and her husband and Rs.5,000/- to each of the other victims.

18. In death of SAVINDER SINGH GROVER, 1993 SCC (Cri.) 1464, on the report submitted by the Additional District Judge, Delhi, it was found that the story given

by the police indicating the circumstances leading to the death of Savinder Singh on account of suicidal jump was not truthful. There was a strong suspicion of misfeasance torture. On this facts, the Apex Court directed

- (1) the CBI to ensure that the FIR is registered on the facts as emanating from the order and report of the Additional District Judge and
- (2) to pay a sum of Rs. 2 lakhs as ex-gratia payment to the widow of the deceased Savinder Singh.

19. In *INDER SINGH v. STATE OF PUNJAB & ors.*, reported in (1995) 3 SCC 702, it was alleged that the Deputy Superintendent of Police, on suspicion that there were in all seven persons in the abduction of his younger brother, forcibly removed them from their farm house and they were subsequently killed. In spite of the fact that this was reported to Sr. Superintendent of Police and the D.I.G., no serious action was taken. The Supreme Court directed

- (1) CBI inquiry
- (2) On the basis of the report of the CBI, disciplinary action against the concerned erring officers
- (3) the State was asked to pay to the Legal representatives of the said seven persons an amount of Rs.1,50,000/-
- (4) the petitioner was awarded cost of the petition quantified as Rs.25,000/-.

As we have found that prima facie, the death of Satishbhai is traceable to the custodial torture, it would be just and proper to award suitable compensation as interim measure to Smt. Ushaben Punjani, widow of the deceased Satishbhai. We are told that the deceased was a petty trader. The petitioner has claimed compensation for a sum of Rs.2 lakhs. Considering the facts and circumstances of the case, in our opinion, it would be just and proper to direct the State-respondent No.1 to pay compensation for a sum of Rs.1.50 lakhs as an interim measure.

20. So far as the departmental inquiry against

respondent No.2 is concerned, we have perused the relevant record. The record shows that the departmental enquiry against respondent No.2 has been dropped on the ground that a statement has been made at the floor of the House by the then Hon'ble Chief Minister that the deceased Satishbhai died not on account of beating by respondent No.2 police officer and as such if the enquiry is held, this may lead to finding in contradiction to the statement made by the then Hon'ble Chief Minister at the floor of the House. The attitude and the reasoning of the State Government has left us puzzled and wondering. We simply say that reasons given for dropping the Departmental inquiry is erroneous.

21. Dealing with the anxiety of the petitioner of the increasing cases of police torture and custodial death, certain circulars have been placed before us whereby the concerned authorities have been directed to follow the guidelines laid down by this Court, the Apex Court and the Human Rights Commission. Broad guidelines have been laid down by the Apex Court in D.K. BASU's case (supra) and assurance has been given by the Addl. Advocate General that the same shall be followed punctually and faithfully. In view of this, no further direction is required to be given.

22. In view of the aforesaid, this Special Civil Application is allowed and the following directions are given:

- (1) Smt. Ushaben Satishbhai Punjani, widow of the deceased Satishbhai is awarded a compensation of Rs. 1.50 lakhs as interim measure. She has been paid a sum of Rs.25,000/- from the Chief Minister's Fund earlier and as such now she will be paid Rs. 1.25 lakhs.
- (2) The said amount shall be deposited in the office of the Registrar, High Court of Gujarat, Ahmedabad by the respondent No.1 within a period of two months from the date of receipt of writ. On depositing the amount, the Registrar shall invest the said amount of Rs.1,25,000/- in any Scheduled Bank in Smt. Ushaben Satishbhai Punjani's name initially for a period of 3 years, during which she will receive the interest payable thereon.
- (3) After the period of 3 years, further order shall be obtained either for reinvestment of the

principal amount or for being paid to said Ushaben.

(4) The Collector, Jamnagar will ensure compliance of this order and report to this Court within a period of 3 months.

(5) Police will complete the investigation and submit Police Report in the Court of competent jurisdiction in accordance with law, within a period of two months from the date of receipt of the writ.

(6) Respondent No.1 shall proceed with the Departmental enquiry against respondent No.2 in accordance with law.

(7) Any observation made in this order will not influence civil or criminal or Departmental proceedings in the matter.

(9) The petitioner is awarded a cost of Rs.2000/- . payable by respondent No.1.

Rule made absolute to the aforesaid extent.

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msh.